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Office of Attorney General  
Tobacco Enforcement Section

IN THE  
COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
by GERALD J. PAPPERT,	:	
Acting Attorney General,	:	
	:	
Plaintiff	:	
v.	:	No. 405 M.D. 2001
	:	
SUN TOBACCO, INC.,	:	
	:	
Defendant	:	

SETTLEMENT AGREEMENT

This Agreement is entered into between the Commonwealth of Pennsylvania (hereafter "Commonwealth") and Sun Tobacco, Inc. (hereafter "Sun").

The Commonwealth and Sun having determined that a settlement of the issues raised in this lawsuit would be beneficial to all concerned, the parties agree to the following terms of settlement relating to Sun's requirement to abide by the Tobacco Settlement Agreement Act, 35 P.S. §5671 *et. seq.*, for the sale of its cigarettes in Pennsylvania during the years 2000, 2001, and 2002:

1. Upon execution of this Agreement, the Commonwealth and Sun agree to jointly submit the agreement to the Commonwealth Court of Pennsylvania for approval.
2. Within ten (10) days of the date of the Commonwealth's Court approval of this Agreement, Sun shall deliver to counsel for the Commonwealth a certified check payable to the Office of Attorney General of the Commonwealth of Pennsylvania in the amount of four hundred forty thousand dollars (\$440,000.00). Of this amount, four hundred thousand dollars (\$400,000.00) is in payment of a civil penalty for Sun's failure to abide by the Tobacco

Settlement Agreement Act, 35 P.S. §5671 *et. seq.* (hereafter "TSAA"), for the sale of its tobacco products in Pennsylvania in the year 2001. The remaining forty thousand dollars (\$40,000.00) is to reimburse the Commonwealth for attorney time expended in the prosecution of this matter.

3. The Commonwealth agrees to defer prosecution of its lawsuit against Sun for a period of six months following approval of this Agreement by the Commonwealth Court. At the end of such time, if Sun has complied with its duties and responsibilities under this Agreement, the Commonwealth shall dismiss the lawsuit.

4. Payment of the amount referenced in paragraph two may be paid from funds contained in the escrow account Sun has established with Sun Trust Bank, account #56-02-137-69000167, Pennsylvania-Sub account #042-02. The parties agree to execute all such documents required by Sun Trust for the release of funds from the account to the Commonwealth in a timely manner for purposes of effectuating this settlement.

5. Sun agrees to repay the full amount used from the escrow fund for settlement purposes, at the rate of thirty-seven thousand dollars (\$37,000.00) per month, starting on the 10<sup>th</sup> day of the month following the execution of this Agreement and continuing every month thereafter on the 10<sup>th</sup> day until all such funds used from the escrow account to effectuate this Agreement have been paid back into the escrow account. Sun agrees to instruct the escrow agent to provide to the Commonwealth proof of such monthly deposits within five days of each deposit having been made. In the event that Sun does not make a monthly payment in a timely manner, i.e. by 2400 hours on the 10<sup>th</sup> of each month, the

remaining amount due and owing for purposes of repaying the escrow fund account will be due and owing in full immediately.

6. Sun agrees that for the purposes of compliance with the TSAA that it has committed one knowing violation of the TSAA for the sale of its cigarettes in Pennsylvania during the year 2001. Sun further agrees that if the Commonwealth files suit against Sun for any future violation or violations of the TSAA this admission by Sun of one knowing violation shall be deemed an admission of fact by the Court for penalty purposes.

7. Sun agrees that it will fully comply with all the terms and conditions of the TSAA for the sale of its cigarettes in Pennsylvania for the tobacco products it manufactures, or causes to be manufactured, by contract manufacturing or otherwise.

8. The Commonwealth and Sun acknowledge and agree that this Agreement is voluntarily entered into by the parties as a result of arm's-length negotiations and that the parties were each represented by counsel in deciding to enter into this Agreement.


9. Neither party shall be considered the drafter of this Agreement, or any provision contained herein, for the purposes of any statute, case law, or rule of interpretation or construction, that would, or might cause, any provision to be construed against the drafter.


10. The Commonwealth and Sun hereby represent that this Agreement has been duly authorized, and, upon execution, will constitute a valid and binding contractual obligation, enforceable in accordance with its terms.

11. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to any conflict of law rules of Pennsylvania.

12. The terms contained in paragraphs two and five of this Agreement are not severable and if any court materially alters, modifies, renders unenforceable those terms, this Agreement is rendered null and void. If any court materially modifies, renders unenforceable, or finds to be unlawful, any of the remaining paragraphs contained within this Agreement, the remainder of the Agreement shall remain in full force and effect.

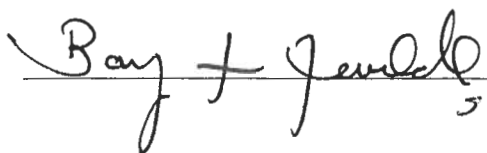
13. This Agreement embodies the entire agreement and understanding between the parties relating to the subject matter hereof. It supersedes: (1) any prior agreements and understandings relating to such subject matter, whether written or oral, and (2) any purportedly contemporaneous oral agreements and understandings relating to such subject matter.

  
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J. RONALD DENMAN (Date)  
Attorney for Sun Tobacco, Inc.  
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Office of Attorney General  
Tobacco Enforcement Section  
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Harrisburg, PA 17120  
(717) 783-1794

DATED FEBRUARY 4, 2004

APPROVED BY THE COURT:

  
\_\_\_\_\_  
S. J.

Certified from the Record